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10 April 1981

file 31

Disclosure of US Intelligence Information:
Authorities and Procedures

Authorities

The most recent and authoritative grant of authority to the DCI with respect to US intelligence activities is found in E.O. 12036, dated 24 January 1978. Section 1-601(i) provides that the DCI shall:

Ensure the establishment by the Intelligence Community of common security and access standards for managing and handling foreign intelligence systems, information and products.

The order also provides in Section 1-604 that:

The Director of Central Intelligence shall insure that programs are developed which protect intelligence sources, methods and analytic procedures.....

Section 1-601(g) provides that the DCI shall:

Formulate policies concerning intelligence arrangements with foreign governments, and coordinate intelligence relationships between agencies of the Intelligence Community and the intelligence or internal security services of foreign governments.

Further Section 1-711 mandates that senior officials of the Intelligence Community shall:

Disseminate intelligence to cooperating foreign governments under arrangements established or agreed to by the Director of Central Intelligence.

Finally, Section 1-710 provides that these same officials shall:

Protect intelligence and intelligence sources and methods consistent with guidance from the Director of Central Intelligence and the NSC.

Domestic Disclosure

While the DCI has legal responsibility for the protection of sources and methods he lacks directive authority in the domestic field

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for control over unauthorized disclosures and therefore must rely on persuasive means and logical argument as the best way to ensure protection of intelligence information.

Over the years alternative means have been sought and employed with varying degrees of success. Among these are Presidential expressions of concern at Cabinet meetings, Presidential directives on disclosures with DCI implementing guidelines, Presidential memoranda for the Cabinet and Heads of Agencies, repetitive requests from the Director of Central Intelligence to NFIB members that requirements for dissemination of intelligence materials be reviewed and limited, clearances held to the minimum, and personnel periodically reindoctrinated. Systems of compartmentation have been established and maintained for the protection of various categories of sensitive information, and personnel security criteria for access to compartmented intelligence information have been standardized and made more stringent. The Director of Central Intelligence has personally contacted the heads of some departments and agencies to express concern that personnel may be lax about disclosure of intelligence materials, and has also expressed his concern in writing to the heads of certain departments and agencies.

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Prior to the establishment of the United States Intelligence Board in 1958, each department and agency concerned with intelligence collection or processing was solely responsible for protecting its own intelligence materials and activities and investigating suspected unauthorized disclosures.

With the creation of the USIB and its Security Committee (1959), the Director of Central Intelligence was authorized to require that reports of investigations, including a description of corrective measures, be sent to him for review and appropriate further action. Massive investigative efforts were undertaken in the 60s ([] people were investigated in connectin with one leak) in unsuccessful attempts to locate the sources of serious unauthorized disclosures.

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While the Security Committee continues to be responsible for the coordinated review of leaks, the policy and security atmosphere has changed over time. In the late seventies the Security Committee focus was redirected from leak investigations to better means of protecting sensitive intelligence culminating in the aborted APEX exercise.

Concomitant with the refocus has been a serious effort by the DCI's Office of General Counsel to enlist the support of the Justice Department toward either civil or criminal initiatives toward stopping leaks.

The interest in stemming the leakage of intelligence information through the press has resulted in adoption of detailed guidelines as spelled out in Section 5-5 of E.O. 12065 (Tab A) by which Agency heads have administrative remedies available to them.

Finally, the CIA has without success proposed statutory protection for "Intelligence Data" whose peculiarity in sources and methods require it.

Foreign Disclosure

Procedures for overall release of intelligence to foreign officials do not exist in the sense that the National Disclosure Policy* exists for classified military information. Release of intelligence has been guided in the first instance by two basic principles, one of which is the recognition of the right of each organization to control its own materials. The DCI provides intelligence organizations with the tools to protect intelligence from disclosure via the series of controls set forth in DCID 1/7 (Tab B). One of these is the NOFORN caveat which requires originator permission to release intelligence to foreigners. The other basic principle is that the release of intelligence is to be justified by a gain for the United States.

While the procedures for the release of SIGINT hardware and intelligence information are well established it is more difficult to cite specific procedures when SIGINT information is used as part of a finished intelligence release to foreign officials. In the former case DCID 6/2 (Tab C) gives the Director, NSA the responsibility for the

* The National Disclosure Policy (NDP) was established under the auspices of the Secretary of State and the Secretary of Defense for the disclosure of classified military information to foreign governments. While military intelligence information is one of the subjects covered by the policy, the NDP expressly provides that it does not affect or modify the responsibility of the DCI to protect intelligence sources and methods or to make specific determinations concerning disclosures to foreign recipients in accordance with applicable law. Moreover, the policy does not apply to the disclosure of national intelligence or interdepartmental intelligence produced within the NFIB structure.

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